Court Upholds Market-Rate Fees Awarded to Nonprofit Lawyers

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The Supreme Court ruled yesterday that nonprofit, "public interest" lawyers are entitled to the same legal fees as private attorneys when they prevail in suits challenging federal and state government policies.

The decision was a blow to government officials at all levels who have complained bitterly in the past few years about the size of legal-fee awards in these cases. It was a victory for the people who bring these suits, who say that the fees are essential to ensure representation of public-interest causes.

Legal-fee awards from governments are authorized under the Civil Rights Attorney's Fees Awards Act for suits alleging violations of any of more than 100 federal statutes. They are designed to encourage private initiatives to enforce federal laws.

Yesterday's case, *Blum v. Stenson*, arose when lawyers from the nonprofit Legal Aid Society of New York successfully sued the New York State Department of Social Services in 1978, challenging procedures for termination of Medicaid benefits.

After an appellate court affirmed the victory, the Legal Aid Society sought $118,968 in fees from the state for the three lawyers who handled the case.

The breakdown included 809 hours of work at rates ranging from $95 to $105 per hour for the lawyers, whose average experience as practicing attorneys was 1½ years. The hourly rate was based on the prevailing market rates in New York. That part of the fee request totaled $79,312.

In addition, the legal aid lawyers sought a 50 percent bonus or upward adjustment because of the "complexity" and "novelty" of the case, and the "great benefit" achieved by the result. That came to $39,656.

New York officials unsuccessfully challenged both parts of the award, contending that rates should be determined not on the basis of the prevailing market rate but on the actual cost of the legal work, plus profit. Since legal aid lawyers are nonprofit, that would have cut into their potential awards substantially.

The Reagan administration, which has proposed legislation to cap the fee awards, joined the case as a friend of the court. It urged that nonprofit lawyers be paid according to cost, while private lawyers be paid according to market rates.

Justice Lewis F. Powell Jr., writing for a unanimous court, said that nothing in the attorney's-fees statute justifies a distinction between nonprofit private lawyers' fees.

Powell also said that enhanced awards—or bonuses—are permissible in "some cases of exceptional success." But he rejected the $39,656 bonus in this case, saying the evidence failed to justify it. The lawyers can now return to the lower court and make a new case for their bonus.

Justices William J. Brennan Jr. and Thurgood Marshall wrote a separate concurrence, noting that bonuses for taking on risky cases are permissible.

The court also settled a major labor issue yesterday, ruling 5 to 4 that an employe acting alone to enforce a contract provision in the work place can bring an unfair labor practice charge under federal law if an employer retaliates against him.

The case, *National Labor Relations Board v. City Disposal Systems Inc.*, stemmed from the refusal of a driver to take his trash truck out on the highway because he said the vehicle was unsafe.

A clause in the Teamsters contract allowed such refusals, but the union refused to press a grievance on behalf of the driver, James Brown. His only recourse was to file an unfair labor practice charge with the NLRB.

Brown successfully brought such a charge, but the Sixth U.S. Circuit Court of Appeals ruled that he was unprotected by the federal law because he acted alone in refusing to drive. The National Labor Relations Act, the appeals court said, protects only "concerted" activity.

Justice Brennan, resolving a split in the appeals court, said that such explicitly joint action is not required. An employe invoking a provision in a contract negotiated by a union is participating in a "concerted" activity, he wrote.

Justice Sandra Day O'Connor, joined by Chief Justice Warren E. Burger and Justices Powell and William H. Rehnquist, dissented, saying the NLRB had overstepped its delegated authority.